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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,515	02/04/2002	Steven Lederman	LED001 CON	8409

7590

09/05/2003

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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/067,515

Applicant(s)

LEDERMAN, STEVEN

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 21, 47, 57, 59 are indefinite in the use of the phrase "amorphous structure" because the phrase "producing a dried, readily solubilizable product having an amorphous structure by drying said solution containing solubilized calcium" does not state what drying conditions make an amorphous structure.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 39, 41, 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saleeb et al.

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The claims are rejected for the reasons of record cited in the last office action and for these further reasons. Claim 21 has been amended to require that by fully solubilizing the aqueous slurry that a dried solubilized product having an amorphous structure is made by drying the solution. However, Saleeb et al. also fully solubilizes their aqueous solution containing calcium in an aqueous acid solution because they also mix ingredients as applicants do (col. 2, lines 40-50). Applicant's method seems to be basically the same as Saleeb et al. and even the reaction temperature is the same as in the specification (col. 2, lines 1-55). Even though applicant states that his product is amorphous, no limitations have been put into the specification to achieve such a product and to define over the reference. Nothing in the form of a showing has been shown that applicant's product is more amorphous than that of the reference, which only discloses "generally crystalline" (col. 2, lines 14-18). Therefore, it would have been obvious to make a product, which would be as amorphous as shown by the process to Saleeb et al.

Claims 28, 30, 33-38, 40, 43-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saleeb et al. as applied to the above claims, and further in view of Andon (5,468,506) and Keating (5,500,232).

The claims are rejected for the reasons of record cited in the last office action.

#### ARGUMENTS

Applicant's arguments filed 7-1-03 have been fully considered but they are not persuasive. Applicant argues that to make an amorphous structure, that the calcium slurry is solubilized in an acid solution. However, the reference to Saleeb et al. disclose

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mixing the two together. Even though the reference does not state that the calcium is solubilized in the acid solution, nothing is seen that it is not. Applicant argues that when the solubilized calcium solution is dried sufficiently that an amorphous structure is produced. However, no limitations are seen as to particular drying conditions to define over the reference, which also produces a dried product.

Applicant argues as to the 103 rejection that Saleeb's process is to producing a substantially crystalline structure and that drying conditions are such that such a product is produced. However, applicant's claims as said above, do not have any limitations that will make their product any more amorphous than that of the reference.

As to applicant's conclusions on page 10, it is not seen that the acid slurry of Saleeb is not fully solubilized. Just because col. 2, lines 39-70 disclose that particular amounts of ingredients are used, does not mean that the slurry is not solubilized to some extent. No limitations are seen in applicant's claims to define over the reference, besides the word "amorphous".

Applicant states that the structure of Saleeb is substantially crystalline, and the present invention is substantially amorphous. The claims now say only "amorphous", and no definition is seen as to how amorphous the dried mixture should be, or what per cent of the structure would have been amorphous.

Saleeb does disclose a high level of water, and a quenching reaction, but applicant's claims do not exclude such limitations.

As to the references to Andon or Keating, these were used in combination with Saleeb to show the discussed limitations and are not used alone.


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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 9-2-03

  
**HELEN PRATT**  
**PRIMARY EXAMINER**